

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

**KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH
MUBARAK BIN ‘ATTASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI**

AE 639M

Trial Scheduling Order

30 August 2019

1. On 26 July 2019, the Commission heard oral argument on AE 639, to include a discussion of pending trial and discovery issues and the various impediments/concerns the parties believe must be addressed in any trial scheduling order issued by the Commission.¹ Having considered the motions submitted by the parties and the arguments of counsel, the Commission establishes the attached Trial Schedule for the case of *United States v. Khalid Shaikh Mohammad, et al.*

2. **Trial Schedule (Attachment A).** To ensure a fair and expeditious processing of this case the Commission sets **11 January 2021** for the start of the trial on the merits, and establishes the following Trial Scheduling Order setting forth pretrial tasks and deadlines in accordance with (IAW) Rules for Military Commissions (R.M.C.) 108, 801(a)(3), 801(b), and 801(g) and Military Commissions Rules of Court Rule 1.5 and Rule 3.7.c.(1).²

3. **Briefing Schedule (Attachment B).** The trial of this capital case at U.S. Naval Station, Guantanamo Bay (NSGB), Cuba will face a host of administrative and logistics challenges requiring coordination between the parties, the Convening Authority, classified information equity holders, and installation management officials. To ensure early and frequent coordination of these issues, the Commission also establishes a briefing schedule for the Government to provide periodic status updates on these issues.

4. **Motions.** Within **7 calendar days** of filing a motion, the parties shall provide opposing counsel and the Commission a list of all witnesses a party intends to call in support of a motion. Counsel will file proposed findings of fact and conclusions of law with all motions filed with the Commission. Proposed findings of fact should reference either a witness or a document (or both) the party intends to offer during motions practice to support the facts alleged in the motion.

¹ During that discussion, the Defense asserted that the Government was either unable or unwilling to produce, in a timely manner, the discovery of which the Defense believes it is entitled. In response to questioning by the Commission, the Government indicated it was “ready to commit” “that 1 October [2019] is the date by which [the Government] will have made sure [the Government is] in compliance completely with [Rule for Military Commissions (R.M.C.)] 701 and the various orders of [the Commission].” The Government further accepted the fact that a failure by the Government to “live up to” that commitment regarding the production of discovery would lead to adverse “consequences” for the Government. *See* Unofficial/Unauthenticated Transcript of the *U.S. v. Khalid Shaikh Mohammad* Motions Hearing, dated 26 July 2019 from 4:46 P.M. to 5:14 P.M. at pp. 24707-24708.

² The Commission has considered the needs of the Government, the Defense, the Accused, alleged victims, as well as the public –to include the media and the international community in establishing this scheduling order.

Parties may also stipulate to certain facts for the limited purpose of the motion. Responses and replies to motions will be submitted IAW existing rules of court unless an expedited briefing cycle is ordered by the Commission. Trial Counsel shall provide to the Defense all matters ruled discoverable by the Commission pursuant to motions to compel discovery **within 60 days** of each ruling.

5. Convening Authority (CA) Action on Motions for Experts. The CA shall act on all expert consultant requests from the parties **within 30 days** from receipt of the motion. The CA shall either fund all expert assistance ordered by the Commission upon the filing of a motion by the party or provide notice via the moving party of its intent to not comply with the order **within 30 days** of the Commission's order.

6. Joint Status Updates. Commencing in October 2019, during the initial R.M.C. 802 conference preceding the first day of Commission hearings, the Commission will conduct a status conference with the Government and at least one representative from each Defense Team. The conference will be recorded by a court reporter.

7. Trial Plan. Counsel are required to file a trial plan for all litigated cases. Such plans can be useful in helping get ready for and executing the trial. In developing the plan, the Government should initially set it up and forward it on to the Defense for input. Defense will then add its inputs and send it back to the Government **within 30 days of receipt**. The Government will forward it on to the Commission **NLT 75 days prior to the scheduled trial start date**.

So **ORDERED** this 30th day of August, 2019.

Attachments

A. Trial Schedule

B. Briefing Schedule

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W. SHANE COHEN, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary

ATTACHMENT A

TRIAL SCHEDULING ORDER

Specific Task	Deadline	Date Notification Received by Commission
The Government shall file all known requests for protective orders, summaries and substitutions IAW M.C.R.E. 505 with the Commission.	1 October 2019	
The Government shall provide the Commission notice of the CA's ability to supply interpreters and interim security clearances to Defense Teams.	1 October 2019	
The Government shall provide the Defense access to a Magnetic Resonance Imaging machine at (NSGB) along with a reasonable protocol for requesting MRI scans.	1 October 2019	
The Government shall provide the Defense a formal notice of all statements by the Accused IAW M.C.R.E. 304(c), all hearsay statements it intends to introduce against the Accused IAW M.C.R.E. 803(b) and all M.C.R.E. 404(b) evidence the Government intends to use. The M.C.R.E. 304(c) notice shall include any Government proposed <i>Bruton</i> redactions.	1 October 2019	
The Government has notified all Accused of any records of prior criminal convictions of the Accused that the Government may offer on the merits, in rebuttal, including impeachment, or in sentencing and has permitted the Defense to examine such records in the Government's possession.	1 October 2019	
The Government has produced to all Accused all results or reports of physical or mental examination, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the Government, the existence of which is known or by the exercise of due diligence may become known to the Government, and which are material to	1 October 2019 or within 60 days of completion (if done after 1 October 2019)	

the preparation of the defense or are intended for use by the Government as evidence in the prosecution case-in-chief at trial, in rebuttal, or during sentencing.		
The Government has produced to all Accused the names, military email addresses, and military telephone numbers for all known persons identified by unique medical-record identifier pseudonym in the Accused's medical records provided in discovery, which the Government has been able to ascertain via due diligence.	1 October 2019	
With the exception of tangible objects being physically relocated to Naval Station Guantanamo Bay, the Government will allow Defense Counsel the full opportunity to inspect all items required IAW R.M.C. 701.	1 October 2019	
The Defense shall file all "Law Motions" (i.e., not involving the presentation of evidence) to include motions based on defects in the swearing, forwarding, investigation or referral of charges, challenges to the Military Commission system as a matter of law, speedy trial, and challenges to the capital sentencing scheme.	1 November 2019	
The Government shall affirmatively state that it has completed all of its discovery obligations under R.M.C. 701 and its subparagraphs, to include the provision of all discovery matters already ordered disclosed by the Commission to the Defense and all M.C.R.E. 505 protective orders, summaries and substitutions to the Defense.	1 November 2019	
The Government shall provide a copy of its proposed evidence list and witness lists for findings and presentencing to the Defense and the Commission. This list shall include any proposed experts, their Curriculum Vitae, and any reports they have generated or would be relying upon in their testimony.	1 December 2019	

The Defense provide notice of all hearsay statements they intend to offer pursuant to M.C.R.E. 803(b)(2).	1 February 2020	
The Defense shall file all additional evidentiary motions, to include (1) motions <i>in limine</i> , (2) initial motions to suppress Letter Head Memorandum (LHM) statements on grounds other than voluntariness, (3) motions for appropriate relief, (4) motions to suppress any additional statements noticed by the Government IAW M.C.R.E. 304(c) and M.C.R.E. 803(b), (5) motions to suppress other evidence, and (6) motions to exclude M.C.R.E. 404(b) evidence noticed by the Government.	1 February 2020	
The Defense shall file all motions to compel discovery and/or depositions with the Commission.	1 February 2020 or 90 days following the Government's assertion that all R.M.C. 701 and M.C.R.E. 505 matters, including Commission directed disclosures, have been provided to the defense – whichever is later. (all responses to motions will be filed IAW existing rules of court).	
The Defense shall file the final briefs for the motions to suppress related to the voluntariness and motions to suppress on grounds other than voluntariness of the accused's LHM statements to the FBI and for motions regarding Government restrictions on Defense investigation per AE 524LLL.	NLT 75 days following the final witness being called to testify on the matter.	
The Government shall relocate all tangible items it intends to move to (NSGB) for Defense Counsel inspection and maximize Defense Counsel's ability to review the evidence without unnecessary Government interference or restrictions.	1 February 2020	
The Convening Authority shall provide an amended convening order to the Commission with a sufficient number of members to accomplish	1 April 2020	

capital (death penalty) qualification requirements and ultimately sit a panel (data sheets for each member shall be provided to the Defense and the Commission upon selection).		
The Defense shall provide reciprocal discovery, proposed witness and evidence lists for findings and presentencing, as well as notice of any affirmative defenses to include alibi or lack of mental responsibility or intent to introduce expert testimony as to the Accused's mental condition pursuant to RMC 701(g)(2). This list shall include any proposed experts, their Curriculum Vitae, and any reports they have generated or would be relying upon in their testimony.	1 April 2020	
The Parties shall confer and provide the Commission with a proposed questionnaire of agreed upon questions to be provided to potential panel members and any additional questions to which the parties disagree.	1 May 2020	
The Parties will provide all required disclosures per R.M.C. 914.	1 June 2020	
The Parties shall provide any proposed findings and sentencing instructions to the Commission.	1 June 2020	
The Government has produced to all Accused all classified information it intends to introduce in its case in chief or as evidence marked for display to the Accused.	1 July 2020	
The Defense shall give M.C.R.E. 505(g)(1)(A) notice of all classified information the Defense intends to elicit or disclose during the merits phase of the trial and during presentencing proceedings.	1 August 2020	
The Government shall provide notice of objections to Defense use of classified information and Government proposed alternatives to Defense use of classified information.	1 September 2020	
The Parties shall raise any final evidentiary issues arising from pre-trial Commission rulings.	1 October 2020	

The Parties shall provide proposed voir dire questions to the Commission.	1 October 2020	
Final witness and evidence lists for All Parties are due to the Commission along with a proposed trial plan for the presentation of evidence.	1 November 2020	
The Commission holds a final scheduling conference with the parties.	7 December 2020	
The Commission accepts the entry of pleas by each Accused and commences with voir dire of the members.	11 January 2021	

ATTACHMENT B

BRIEFING SCHEDULE

The Government shall work with the CA to provide logistics brief to the Commission and the Defense addressing the following matters and setting forth how the Government intends to ensure the trial is ready to proceed on the scheduled trial date. The briefings will be in writing with an oral presentation during the next scheduled Commission hearings.

1. Adequate Office Space for the parties and the judiciary.	Initial briefing NLT 1 November 2019	
2. Lodging for the parties, the judiciary, the members, the public and the media/press.	Second briefing NLT 1 February 2020	
3. The PA plan and facilities to be made available to accommodate the media/press and their interests in the trial.	Third briefing NLT 1 May 2020	
4. Security clearances for experts, consultants, members of trial and defense teams and all members detailed to the Commissions by the CA.	Fourth briefing NLT 1 August 2020	
5. Transportation plan for witnesses, members, parties, judiciary, etc. during the motion practice, voir dire and the trial itself.	Fifth briefing NLT 1 September 2020	
6. The provision of food for everyone associated with the trial in any capacity for the 9 months or so that the trial process could last.	Sixth briefing NLT 1 October 2020	
7. The plan for accommodating medical emergencies that cannot be handled on the island.	Seventh briefing and items complete NLT 1 November 2020	
8. The plan for redeploying participants during Commission approved breaks in hearing.	Final briefing NLT 1 December 2020	
9. The plan for sequestering the members for weeks at a time.		
10. The plan for ensuring that military members do not lose their BAH and other entitlements during extended TDYs.		
11. The CA's plan for per diem during the extended sessions of the Commission.		